

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JUDITH BEEBE and WALTER BEEBE,

Case No. 2:15-CV-2164 JCM (VCF)

Plaintiff(s),

ORDER

v.

NEW PENN FINANCIAL, LLC d/b/a
SHELLPOINT MORTGAGE SERVICING,

Defendant(s).

Presently before this court is plaintiffs Walter and Judith Beebe's response to the notice of intent to dismiss pursuant to Federal Rule of Civil Procedure 4(m). (ECF No. 23).

Rule 4(m) relevantly states:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

A plaintiff will have failed to properly serve a defendant if that plaintiff “failed to carry his burden under federal law to prove that he delivered a copy of the summons and the complaint to an individual authorized to receive it.” *Vela v. Murphy*, 362 F. App'x 624, 625 (9th Cir. 2010) (citing *Butcher's Union Local 498, United Food and Commercial Workers v. SDC Inv., Inc.*, 788 F.2d 535, 538 (9th Cir.1986)).

Here, plaintiffs provide a record of United States Post Office printing labels. (ECF No. 23). However, these labels do not indicate whether their correspondence actually reached defendant New Penn Financial LLC or if an intended recipient was authorized to receive summons for the defendant. (*Id.*). The plaintiffs' referenced page in their amended complaint is similarly insufficient. (ECF Nos. 21, 23).

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiffs' response to the notice of intent to dismiss (ECF No. 23) be, and the same hereby is, STRIKEN.

IT IS FURTHER ORDERED that plaintiffs must provide proof of service by January 9, 2017, or face dismissal of their amended complaint (ECF No. 21).

DATED December 23, 2016.

James C. Mahan
UNITED STATES DISTRICT JUDGE